

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: (SUMMARY ORDER). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 20th day of August, two thousand seven.

PRESENT:

HON. ROGER J. MINER,
HON. JOSÉ A. CABRANES,
HON. RICHARD C. WESLEY,
Circuit Judges.

YU YE CHEN,
Petitioner,

v.

ALBERTO GONZALES,
Respondent.

06-5183-ag
NAC

FOR PETITIONER: Michael Brown, New York, New York.

FOR RESPONDENT: Thomas A. Marino, United States
Attorney for the Middle District of
Pennsylvania, Stephen R. Cerutti II,

1 **Assistant United States Attorney,**
2 **Harrisburg, Pennsylvania.**

3 UPON DUE CONSIDERATION of this petition for review of a
4 decision of the Board of Immigration Appeals ("BIA"), it is
5 hereby ORDERED, ADJUDGED, AND DECREED, that the petition for
6 review is DENIED.

7 Petitioner Yu Ye Chen, a native and citizen of the
8 People's Republic of China, seeks review of an October 16,
9 2006 order of the BIA affirming the June 30, 2003 decision
10 of Immigration Judge ("IJ") Joanna Miller Bukszpan
11 pretermittting his applications for asylum and withholding of
12 removal. In re Yu Ye Chen, No. A96 257 704 (B.I.A. Oct. 16,
13 2006), aff'g No. A96 257 704 (Immig. Ct. N.Y. City June 30,
14 2003). We assume the parties' familiarity with the
15 underlying facts and procedural history of the case.

16 When the BIA affirms the IJ's decision, for reasons
17 cited therein, then supplements the IJ's decision, we review
18 the decision of the IJ as supplemented by the BIA. See
19 Jigme Wangchuck v. DHS, 448 F.3d 524, 528 (2d Cir. 2006); Yu
20 Yin Yang v. Gonzales, 431 F.3d 84, 85 (2d Cir. 2005). Where,
21 as here, the facts are not disputed, we review the
22 application of law to fact de novo. See Secaida-Rosales v.
23 INS, 331 F.3d 297, 307 (2d Cir. 2003).

1 We find that denial of Chen's asylum and withholding
2 claims is warranted in light of our recent en banc decision
3 in Shi Liang Lin v. United States Dep't of Justice, ___ F.3d
4 ___, 2007 WL 2032066 (2d Cir. July 16, 2007).¹ In Shi Liang
5 Lin, we concluded that the BIA's interpretation of 8 U.S.C.
6 § 1101(a)(42) in C-Y-Z- was incorrect, and that an
7 individual cannot establish per se eligibility for asylum
8 based on his spouse's forced abortion or sterilization.
9 2007 WL 2032066 at *13. We emphasized that, while an
10 individual's forced abortion or sterilization is not
11 irrelevant to her partner's claim, that partner - married or
12 unmarried - must independently establish persecution on
13 account of a protected ground. Id. The partner can meet
14 his burden if he can "prove past persecution or a fear of
15 future persecution for 'resistance' that is directly related
16 to his or her own opposition to a coercive family planning
17 policy." Id.

18 In his asylum application, Chen indicated that he and
19 his wife were fined because of their violation of the family
20 planning policy, and that the majority of this fine remained

¹To the extent Chen seeks review of a CAT claim in his brief to this Court, this claim is dismissed for lack of jurisdiction, because he abandoned it before the IJ and therefore failed to exhaust his administrative remedies. See 8 U.S.C. § 1252(d)(1); Karaj v. Gonzales, 462 F.3d 113, 119-20 (2d Cir. 2006).

1 unpaid. While petitioner characterizes this as "opposition"
2 to the family planning policies of China, we are hard
3 pressed to agree. In our view, Shi Liang Lin and the
4 statute clearly require resistance to Chinese family
5 planning policies to qualify for asylum. Petitioner has
6 failed to identify any acts of resistance.

7 _____For the foregoing reasons, the petition for review is
8 DENIED. Having completed our review, any pending motion for
9 a stay of removal in this petition is DISMISSED as moot. Any
10 pending request for oral argument in this petition is DENIED
11 in accordance with Federal Rule of Appellate Procedure
12 34(a)(2), and Second Circuit Local Rule 34(d)(1).

13
14 _____FOR THE COURT:

15 _____Catherine O'Hagan Wolfe, Clerk
16

17 By: _____